

MARK S. KUNDLA (MSK 9260)
HARDIN, KUNDLA, McKEON & POLETT
COUNSELLORS AT LAW
A PROFESSIONAL CORPORATION
673 Morris Avenue
Springfield, New Jersey 07081
973-912-5222
Attorneys for Defendant
Maserati North America, Inc.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

JOEL BERGSTEIN,	:	
	:	
Plaintiff,	:	Case No. 08 CIV. 3571
vs.	:	
	:	
MASERATI NORTH AMERICA, INC.,	:	ANSWER, SEPARATE DEFENSES
	:	AND JURY DEMAND
Defendant.	:	
_____	:	

Defendant, Maserati North America, Inc., by way of Answer to the Complaint, says:

PRELIMINARY STATEMENT

1. This defendant has insufficient knowledge or information upon which to form a belief as to the truth of the allegations contained in Paragraph One of the Complaint and leaves plaintiff to his proofs.

JURISDICTION AND VENUE

2. This defendant has insufficient knowledge or information to admit or deny the allegations contained in Paragraph Two of the Complaint.

3. This defendant has insufficient knowledge or information upon which to form a belief as to the truth of the allegations contained in Paragraph Three of the Complaint and leaves plaintiff

to his proofs.

PARTIES

4. This defendant has insufficient knowledge or information to admit or deny the allegations contained in Paragraph Four of the Complaint.

5. This defendant has insufficient knowledge or information to admit or deny the allegations contained in Paragraph Five of the Complaint.

6. This defendant has insufficient knowledge or information to admit or deny the allegations contained in Paragraph Six of the Complaint.

STATEMENT OF FACTS

7. This defendant has insufficient knowledge or information to admit or deny the allegations contained in Paragraph Seven of the Complaint.

8. This defendant has insufficient knowledge or information to admit or deny the allegations contained in Paragraph Eight of the Complaint.

9. This defendant has insufficient knowledge or information to admit or deny the allegations contained in Paragraph Nine of the Complaint.

10. This defendant denies the allegations contained in Paragraph Ten of the Complaint.

11. This defendant has insufficient knowledge or information to admit or deny the allegations contained in Paragraph Eleven of the Complaint.

12. This defendant denies the allegations contained in Paragraph Twelve of the Complaint.

13. This defendant has insufficient knowledge or information to admit or deny the allegations contained in Paragraph Thirteen of the Complaint.

14. This defendant has insufficient knowledge or information to admit or deny the allegations contained in Paragraph Fourteen of the Complaint.

15. This defendant has insufficient knowledge or information to admit or deny the allegations contained in Paragraph Fifteen of the Complaint.

16. This defendant has insufficient knowledge or information to admit or deny the allegations contained in Paragraph Sixteen of the Complaint.

17. This defendant has insufficient knowledge or information to admit or deny the allegations contained in Paragraph Seventeen of the Complaint.

18. This defendant has insufficient knowledge or information to admit or deny the allegations contained in Paragraph Eighteen of the Complaint.

19. This defendant has insufficient knowledge or information to admit or deny the allegations contained in Paragraph Nineteen of the Complaint.

20. This defendant has insufficient knowledge or information to admit or deny the allegations contained in Paragraph Twenty of the Complaint.

21. This defendant has insufficient knowledge or information to admit or deny the allegations contained in Paragraph Twenty-One of the Complaint.

22. This defendant has insufficient knowledge or information to admit or deny the allegations contained in Paragraph Twenty-Two of the Complaint.

23. This defendant has insufficient knowledge or information to admit or deny the allegations contained in Paragraph Twenty-Three of the Complaint.

24. This defendant has insufficient knowledge or information to admit or deny the allegations contained in Paragraph Twenty-Four of the Complaint.

25. This defendant has insufficient knowledge or information to admit or deny the allegations contained in Paragraph Twenty-Five of the Complaint.

26. This defendant has insufficient knowledge or information to admit or deny the allegations contained in Paragraph Twenty-Six of the Complaint.

27. This defendant has insufficient knowledge or information to admit or deny the allegations contained in Paragraph Twenty-Seven of the Complaint.

28. This defendant has insufficient knowledge or information to admit or deny the allegations contained in Paragraph Twenty-Eight of the Complaint.

29. This defendant has insufficient knowledge or information to admit or deny the allegations contained in Paragraph Twenty-Nine

of the Complaint.

30. This defendant has insufficient knowledge or information to admit or deny the allegations contained in Paragraph Thirty of the Complaint.

31. This defendant has insufficient knowledge or information to admit or deny the allegations contained in Paragraph Thirty-One of the Complaint.

32. This defendant has insufficient knowledge or information to admit or deny the allegations contained in Paragraph Thirty-Two of the Complaint.

33. This defendant has insufficient knowledge or information to admit or deny the allegations contained in Paragraph Thirty-Three of the Complaint.

34. This defendant has insufficient knowledge or information to admit or deny the allegations contained in Paragraph Thirty-Four of the Complaint.

35. This defendant has insufficient knowledge or information to admit or deny the allegations contained in Paragraph Thirty-Five of the Complaint.

36. This defendant has insufficient knowledge or information to admit or deny the allegations contained in Paragraph Thirty-Six of the Complaint.

37. This defendant has insufficient knowledge or information to admit or deny the allegations contained in Paragraph Thirty-Seven of the Complaint.

38. This defendant has insufficient knowledge or information

to admit or deny the allegations contained in Paragraph Thirty-Eight of the Complaint.

39. This defendant has insufficient knowledge or information to admit or deny the allegations contained in Paragraph Thirty-Nine of the Complaint.

40. This defendant has insufficient knowledge or information upon which to form a belief as to the truth of the allegations contained in Paragraph Forty of the Complaint and leaves plaintiff to his proofs.

41. This defendant denies the allegations contained in Paragraph Forty-One of the Complaint.

FIRST COUNT

(Breach of Express Warranties Pursuant to the Uniform Commercial Code §2-313 and §20318, and the Magnuson-Moss Federal Act 15 U.S.C. §2301 et seq.)

42. Defendant repeats and incorporates each and every response to the allegations contained within the preceding counts and makes the same a part hereof as if set forth herein at length.

43. This defendant has insufficient knowledge or information upon which to form a belief as to the truth of the allegations contained in Paragraph Forty-Three of the Complaint and leaves plaintiff to his proofs.

44. This defendant denies the allegations contained in Paragraph Forty-Four of the Complaint.

45. This defendant denies the allegations contained in Paragraph Forty-Five of the Complaint.

46. This defendant denies the allegations contained in

Paragraph Forty-Six of the Complaint.

47. This defendant denies the allegations contained in Paragraph Forty-Seven of the Complaint.

SECOND COUNT

(Breach of Implied Warranty of Merchantability Pursuant to the Uniform Commercial Code §2-314 and §2-318, and the Magnuson-Moss Federal Act U.S.C. §2301 et seq.)

48. Defendant repeats and incorporates each and every response to the allegations contained within the preceding counts and makes the same a part hereof as if set forth herein at length.

49. This defendant has insufficient knowledge or information to admit or deny the allegations contained in Paragraph Forty-Nine of the Complaint.

50. This defendant has insufficient knowledge or information upon which to form a belief as to the truth of the allegations contained in Paragraph Fifty of the Complaint and leaves plaintiff to his proofs.

51. This defendant has insufficient knowledge or information upon which to form a belief as to the truth of the allegations contained in Paragraph Fifty-One of the Complaint and leaves plaintiff to his proofs.

52. This defendant denies the allegations contained in Paragraph Fifty-Two of the Complaint.

53. This defendant denies the allegations contained in Paragraph Fifty-Three of the Complaint.

54. This defendant denies the allegations contained in Paragraph Fifty-Four of the Complaint.

THIRD COUNT

(Breach of Written Warranty Pursuant to the
Uniform Commercial Code §2-213 and the
Magnuson-Moss Federal Act 15 U.S.C. §2301 et seq.)

55. Defendant repeats and incorporates each and every response to the allegations contained within the preceding counts and makes the same a part hereof as if set forth herein at length.

56. This defendant has insufficient knowledge or information upon which to form a belief as to the truth of the allegations contained in Paragraph Fifty-Six of the Complaint and leaves plaintiff to his proofs.

57. This defendant has insufficient knowledge or information upon which to form a belief as to the truth of the allegations contained in Paragraph Fifty-Seven of the Complaint and leaves plaintiff to his proofs.

58. This defendant has insufficient knowledge or information upon which to form a belief as to the truth of the allegations contained in Paragraph Fifty-Eight of the Complaint and leaves plaintiff to his proofs.

59. This defendant has insufficient knowledge or information upon which to form a belief as to the truth of the allegations contained in Paragraph Fifty-Nine of the Complaint and leaves plaintiff to his proofs.

60. This defendant has insufficient knowledge or information upon which to form a belief as to the truth of the allegations contained in Paragraph Sixty of the Complaint and leaves plaintiff to his proofs.

61. This defendant denies the allegations contained in Paragraph Sixty-One of the Complaint.

62. This defendant denies the allegations contained in Paragraph Sixty-Two of the Complaint.

FOURTH COUNT

(Breach of New York Lemon Law Gen.Bus. Law §198)

63. Defendant repeats and incorporates each and every response to the allegations contained within the preceding counts and makes the same a part hereof as if set forth herein at length.

64. This defendant has insufficient knowledge or information to admit or deny the allegations contained in Paragraph Sixty-Four of the Complaint.

65. This defendant has insufficient knowledge or information to admit or deny the allegations contained in Paragraph Sixty-Five of the Complaint.

66. This defendant denies the allegations contained in Paragraph Sixty-Six of the Complaint.

67. This defendant denies the allegations contained in Paragraph Sixty-Seven of the Complaint.

68. This defendant denies the allegations contained in Paragraph Sixty-Eight of the Complaint.

FIFTH COUNT

(Breach of New Jersey Consumer Fraud Act)

69. Defendant repeats and incorporates each and every response to the allegations contained within the preceding counts and makes the same a part hereof as if set forth herein at length.

70. This defendant has insufficient knowledge or information

to admit or deny the allegations contained in Paragraph Seventy of the Complaint.

71. This defendant has insufficient knowledge or information to admit or deny the allegations contained in Paragraph Seventy-One of the Complaint.

72. This defendant denies the allegations contained in Paragraph Seventy-Two of the Complaint.

73. This defendant denies the allegations contained in Paragraph Seventy-Three of the Complaint.

74. This defendant denies the allegations contained in Paragraph Seventy-Four of the Complaint.

SIXTH COUNT
**(Breach of Good Faith and Fair Dealing
Obligation Under UCC §1-203)**

75. Defendant repeats and incorporates each and every response to the allegations contained within the preceding counts and makes the same a part hereof as if set forth herein at length.

76. This defendant denies the allegations contained in Paragraph Seventy-Six of the Complaint.

77. This defendant denies the allegations contained in Paragraph Seventy-Seven of the Complaint.

SEVENTH COUNT
**(Revocation of Acceptance Pursuant to the
Uniform Commercial Code §2-608)**

78. Defendant repeats and incorporates each and every response to the allegations contained within the preceding counts and makes the same a part hereof as if set forth herein at length.

79. This defendant denies the allegations contained in

Paragraph Seventy-Nine of the Complaint.

80. This defendant denies the allegations contained in Paragraph Eighty of the Complaint.

81. This defendant denies the allegations contained in Paragraph Eighty-One of the Complaint.

82. This defendant denies the allegations contained in Paragraph Eighty-Two of the Complaint.

83. This defendant denies the allegations contained in Paragraph Eighty-Three of the Complaint.

SEPARATE DEFENSES

FIRST: There were no defects in material and/or workmanship at the time the vehicle left the possession of this defendant.

SECOND: There were no defects which substantially impaired the value of the vehicle to the plaintiff, nor which constituted a material breach of any warranty or contract between the parties; and defects, if any, in the vehicle were easily curable by the vehicle dealer.

THIRD: Plaintiff's remedies and damages, if any, are limited and circumscribed by the terms of the defendant's express warranty.

FOURTH: Plaintiff failed to take reasonable steps to mitigate any damages sustained.

FIFTH: The damages, if any, sustained by the plaintiff are the result of the plaintiff's negligence, which percentage of negligence exceeded the negligence, if any, of this defendant.

SIXTH: The damages, if any, sustained by the plaintiff are the result of plaintiff's misuse of or failure to properly maintain the vehicle.

SEVENTH: The damages, if any, sustained by the plaintiff were the result of the negligence of third parties over whom this defendant had no control and/or no duty to control.

EIGHTH: Plaintiff failed to effect the rightful rejection of the goods.

NINTH: Plaintiff failed to effect the rightful revocation of his acceptance of the product within reasonable time after he discovered or should have discovered the grounds for such revocation and/or before any substantial change in the condition of the goods which was not caused by any defects.

TENTH: Plaintiff has failed to meet the requirements of the New Jersey Lemon Law.

ELEVENTH: The Complaint may be barred by the applicable statute of limitations.

TWELFTH: Defendant did not breach any contractual obligation or warranties expressed, implied or arising by operation of law.

THIRTEENTH: Defendant has fully complied with all terms, conditions and provisions of 15 U.S.C. Section 2301, et seq., the Magnuson-Moss Warranty Act.

FOURTEENTH: Any defect, malfunction or failure to conform or breach of warranty alleged by the plaintiff was caused by damage

which occurred while the product was in possession of the plaintiff or was being used by the plaintiff, so that the alleged cause of action is barred by the provisions of 15 U.S.C. Section 2304(c).

FIFTEENTH: Plaintiff failed to comply with conditions precedent and necessary to recover under 15 U.S.C. Section 2301, et seq., the Magnuson-Moss Warranty Act.

SIXTEENTH: Damages sought by the plaintiff are expressly and conspicuously disclaimed in the written warranty which went along with the vehicle at the time of sale.

JURY DEMAND

Defendant hereby demands a trial by jury as to all issues.

HARDIN, KUNDLA, MCKEON &
POLETTTO
Attorneys for Defendant,
Maserati North America, Inc.

By 
MARK S. KUNDLA

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